

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

BUNGIE, INC.,

Plaintiff,

v.

AIMJUNKIES.COM; PHOENIX
DIGITAL GROUP LLC; DAVID
SCHAEFER; JORDAN GREEN;
JEFFREY CONWAY; and JAMES MAY,

Defendants.

No. 2:21-cv-811-TSZ

**[PROPOSED] ORDER GRANTING
PLAINTIFF BUNGIE, INC.'S MOTION
FOR SPOILIATION SANCTIONS
UNDER FED. R. CIV. P. 37(E)**

THIS MATTER came before the Court for hearing on Plaintiff Bungie, Inc.'s ("Bungie") Motion for Discovery Sanctions and to Compel Discovery Responses (Dkt. No. 100) and Bungie's Supplemental Briefing in Support of Spoliation Sanctions Under Fed. R. Civ. P. 37(e) (collectively, the "Motion"). Now, having reviewed the parties' briefing, declarations, and exhibits attached thereto, it is hereby ORDERED that Bungie's Motion is GRANTED, it is further:

ORDERED that Bungie is awarded monetary sanctions for Defendants' spoliation to the extent not duplicative of those sanctions imposed in Arbitrator Cox's Final Award (Dkt. No. 89-1);

ORDERED that Bungie shall submit a declaration accounting for the attorneys' fees and other costs expended in connection with Defendants' spoliation, including Bungie's attorneys' fees and costs incurred in investigating and litigating Defendants' spoliation;

[PROPOSED] ORDER
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1 ORDERED that, because Defendants deleted relevant evidence with an intent to deprive
 2 Bungie of its use of the spoliated evidence after they had a duty to preserve such evidence, an
 3 adverse inference is entered regarding the content of and reason for deleting the following:

- 4 1. financial documents and data related to the AimJunkies.com website that would
 5 have shown how many copies of Defendants' *Destiny 2* cheat software (the "Cheat
 6 Software") were sold;
- 7 2. records relating to the Cheat Software, the Cheat Software loader, and the
 8 AimJunkies.com Terms of Service from the AimJunkies.com website;
- 9 3. marketing and promotional materials relating to the Cheat Software, including
 10 those featuring images from Bungie's *Destiny 2* video game; and
- 11 4. the C, D, F, and H drives from Mr. May's computer, which he alleges Bungie
 12 accessed.

13 ORDERED that, because Defendants deleted relevant evidence with the intent to deprive
 14 Bungie of its use of the spoliated evidence after they had a duty to preserve such evidence, the
 15 following counterclaims are DISMISSED with prejudice:

- 16 1. Phoenix Digital Group LLC's First Amended Counterclaim for breach of
 17 contract; and
- 18 2. James May's First, Second, and Third Amended Counterclaims under the
 19 Computer Fraud and Abuse Act (18 U.S.C. §§ 1030(a)(4), 1030(a)(2)(C), and
 20 1030(a)(5)(C)) and Fourth Amended Counterclaim under the Digital Millennium
 21 Copyright Act (17 U.S.C. § 1201(a)), to the extent those claims rely on Bungie's
 22 alleged access of any files on the C, D, F, and H drives from Mr. May's computer.

23 **IT IS SO ORDERED**

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3 DATED this _____ day of _____, 2023.
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6 _____
7 Honorable Thomas S. Zilly
8 UNITED STATES DISTRICT JUDGE
9

10 Presented by:

11 /s/ William C. Rava

12 William C. Rava, WSBA No. 29948
13 Christian W. Marcelo, WSBA No. 51193
14 Jacob P. Dini, WSBA No. 54115

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[PROPOSED] ORDER
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